

1 JOHN A. RUSSO, City Attorney - SB #129729  
2 RANDOLPH W. HALL, Assistant City Attorney - SB #080142  
3 RACHEL WAGNER, Supervising Trial Attorney - SB # 127246  
One Frank H. Ogawa Plaza, 6th Floor  
Oakland, California 94612  
Telephone: (510) 238-4921  
Fax: (510) 238-6500  
Email: [rwanag...@oaklandcityattorney.org](mailto:rwanag...@oaklandcityattorney.org)  
25404/413699

**6 Attorneys for Defendants  
CITY OF OAKLAND, et al.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS L. HARVEY,  
Plaintiff

V.  
13 CITY OF OAKLAND, a municipal  
14 Corporation; OAKLAND POLICE  
15 DEPARTMENT; WAYNE TUCKER, Chief,  
16 Oakland Police Department; DEPUTY  
17 CHIEF HOWARD JORDAN,  
18 OAKLAND POLICE LIEUTENANT GIER,  
19 OAKLAND POLICE LIEUTENANT  
20 WHITMAN, OAKLAND POLICE OFFICER  
DOMINIQUE AROTZARENA,  
OAKLAND POLICE OFFICER J. MORRIS,  
OAKLAND POLICE OFFICER MUSCHI,  
OAKLAND POLICE OFFICER GUTIERREZ,  
In their official and individual capacities,  
Does 1 through 50, inclusive.

21 Defendants.

CASE NO. C07-01681

**NOTICE OF MOTIONS AND MOTION  
TO DISMISS FIRST AMENDED  
COMPLAINT AND MOTION FOR MORE  
DEFINITE STATEMENT**

[F.R.C.P. 12b(6), 12(e)]

Part 9 of 10 - 11/2027

Time: 9:30 a.m.  
Dept: Courtroom 11, 19<sup>th</sup> floor  
  
The Honorable Martin J. Jenkins

34 TO PLAINTIFF IN PRO PER

**PLEASE TAKE NOTICE** that on Tuesday, September 11, 2007, at 9:30 a.m., or

1 as soon as the matter may be heard in Courtroom 11 of the above captioned Court,  
2 located at 450 Golden Gate Avenue, in San Francisco, CA, Defendants CITY OF  
3 OAKLAND, CHIEF WAYNE TUCKER, DEPUTY CHIEF HOWARD JORDAN, OAKLAND  
4 POLICE LIEUTENANT GIER, OAKLAND POLICE LIEUTENANT WHITMAN, OAKLAND  
5 POLICE OFFICER DOMINIQUE AROTZARENA, OAKLAND POLICE OFFICER J.  
6 MORRIS, OAKLAND POLICE OFFICER MUSCHI, OAKLAND POLICE OFFICER  
7 GUTIERREZ ("City Defendants") will and hereby do move the Court for an order, (1)  
8 pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing certain causes of action  
9 in this case for failure to state a claim as a matter of law, and (2) pursuant to Federal Rule  
10 of Civil Procedure 12(e), directing plaintiff to provide a more definite statement in his  
11 complaint.

14 The motion to dismiss is made on the grounds that as to each of the causes of  
15 action in plaintiff's complaint, plaintiff has failed to state a claim for which relief can be  
16 granted. More specifically, the motion is based on the following grounds:

- 17 1. Plaintiff's First Cause of Action Under 42 U.S.C. Section 1983 Fails As A  
18 Matter of Law.
- 19 2. Plaintiff Improperly Relies on A Single Incident To Make A Monell Claim  
20 Under 42 U.S. Section 1983 (First Cause of Action).
- 21 3. Claims Based on Detention or Jailing Under A facially Valid Arrest Warrant  
22 Have Been Rejected by Federal and California Courts (All Causes of  
23 Action).
- 24 4. Private Actions for Damages Are Not Permitted Under the California  
25
- 26

Constitution, And Thus The Fifth and Sixth Causes of Action Should Be Dismissed.

5. Plaintiff's State Law Causes Of Action For False Arrest And Imprisonment, Negligence, and Negligent Infliction of Emotional Distress Fail Against the City For Failure to Identify A Statutory Enactment.

6. Plaintiff Makes No Fact Allegations To Support Claims Broadly Made Against Several Individual Defendants (All Causes of Action).

The motion for more definite statement is made on the grounds that plaintiff has pleaded all six causes of action against "All Defendants," though plaintiff's allegations of fact allege no conduct by many of the named individual officers. The first amended complaint is vague and ambiguous in terms of several individual defendants and as to several of the causes of action brought against them.

These motions are based on the accompanying Memorandum of Points and Authorities and the files of the Court (including the initial Complaint and initial Motion to Dismiss) in this case.

Dated: August 6, 2007

JOHN A. RUSSO, City Attorney  
RANDOLPH W. HALL, Assistant City Attorney  
RACHEL WAGNER, Supervising Trial Attorney

By: s/s  
Attorneys for Defendants  
CITY OF OAKLAND, et al.

1  
2                   **PROOF OF SERVICE**  
3                   **Harvey vs. City of Oakland**  
4                   **Case No. C07-01681 MJJ**

5  
6                   I am a resident of the State of California, over the age of eighteen years, and not a  
7 party to the within action. My business address is City Hall, One City Hall Plaza, 6th  
8 Floor, Oakland, California 94612. On date shown below, I served the within documents:

9                   **NOTICE OF MOTIONS AND MOTION TO DISMISS FIRST AMENDED COMPLAINT**  
10                  **AND MOTION FOR MORE DEFINITE STATEMENT**

- 11                   by transmitting via facsimile the document(s) listed above to the fax  
12                  number(s) set forth below, or as stated on the attached service list, on  
13                  this date before 5:00 p.m.  
14                   by placing the document(s) listed above in a sealed envelope with  
15                  postage thereon fully prepaid, in the United States mail at Oakland,  
16                  California addressed as set forth.  
17                   by causing personal delivery by \_\_\_\_\_ of the document(s)  
18                  listed above to the person(s) at the address(es) set forth below.  
19                   by causing such envelope to be sent by Federal Express/Express Mail

20                  **Demetrius L. Harvey**  
21                  **360 So. Helm Avenue**  
22                  **Fresno, CA 93727**  
23                  **Telephone: 559-255-1971**

24                  I am readily familiar with the City of Oakland's practice of collection and processing  
25                  correspondence for mailing. Under that practice it would be deposited with the U.S.  
26                  Postal Service on that same day with postage thereon fully prepaid in the ordinary course  
                     of business.

27                  I declare under penalty of perjury under the laws of the United States of America  
28                  that the foregoing is true and correct in accordance with 28 U.S.C. § 1746.

29                  Executed on August 6, 2007, at Oakland, California.

30                  \_\_\_\_\_  
31                  s/s  
32                  Deborah Walther